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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/303,306 04/30/99 HAMBLEY

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IM62/0424

EXAMINER

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CANADA

CINTINS, I

ART UNIT

PAPER NUMBER

1724

10

AIR MAIL

DATE MAILED:

04/24/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/303,306

Applicant(s)
Hambley et al.

Examiner
Ivars C. Cintins

Art Unit
1724



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Feb 1, 2001
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above, claim(s) 8-17, 22-25, and 27-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 18-21, and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4, 6, 9
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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Applicant's election, in Paper No. 8, of the filter underdrain assembly (Group I) is acknowledged. Applicant's election of "plurality of panel members" as the underdrain assembly species is also acknowledged. Because Applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (see MPEP § 818.03(a)). Claims 1-7, 18-21 and 26 appear to read on the elected invention. Claims 22-25, originally included in Group I, should have been included in Group II because these claims appear to be directed to a panel member (note that they depend from claim 8), and not to an underdrain assembly. Accordingly, claims 8-17, 22-25, 27 and 35-39 are withdrawn from further consideration as being directed to non-elected inventions; and claims 28-34 are withdrawn from further consideration as being directed to a non-elected species.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7, 18-21 and 26 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant

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regards as the invention. Since the presence of a filtration system having a backwash inlet has not been positively recited in claims 1-7, 18-21 and 26, the recitations that apertures of the panel members which are located further away from a "backwash inlet" have a smaller cross-sectional area, or are fewer in number, than apertures located closer to this "backwash inlet" (claim 1, lines 7-11; claim 18, lines 10-13; and claim 26, lines 7-10) are vague, and indefinite as to the structural limitations intended. Similarly, the terms "takes the form of a hat" (claims 6 and 7, line 2) and "slotted apertures respectively can be varied from panel element to panel element" (claim 18, lines 9-10) are vague, and indefinite as to the limitations intended.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-7, 18-21 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Medworth (U.S. Patent No. 5,976,370) in view of Shea et al (U.S. Patent No. 5,865,999). Medworth discloses a filter underdrain assembly comprising a plurality of

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panel members (24 and 26) forming an underdrain structure. This reference further teaches (col. 4, lines 1-2) backwashing with a combination of liquid and air. Accordingly, this primary reference discloses the claimed invention with the exception of the recitation of different sized apertures, and slotted apertures (claims 2 and 18-21). Shea et al discloses a similar underdrain assembly for a granular filtration system, which underdrain assembly includes opening of different cross-sectional area (48 and 54; see col. 6, lines 31-33) and slotted openings (50 and 56). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the system of the primary reference with the different sized and/or slotted apertures of the secondary reference, in order to obtain the advantages disclosed by this secondary reference for the system of the primary reference.

Emrie (U.S. Patent No. 4,331,542) shows a similar granular filtration system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to I. Cintins whose telephone number is (703) 308-3840. The examiner can normally be reached on Monday through Friday from 9:30 AM to 6:00 PM.

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The fax phone numbers for this art unit are: (703) 305-3599 for "Official" faxes after Final Rejection; (703) 305-7718 for all other "Official" faxes; and (703) 305-3602 for "Draft" and other "Unofficial" faxes.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

Ivars C. Cintins
Ivars C. Cintins
Primary Examiner
Art Unit 1724

I. Cintins
April 22, 2001